

IRRIGATION—PROVIDES AN ADEQUATE SYSTEM OF LAWS
RELATING THERETO.

H. B. No. 37.]

CHAPTER 171.

An Act to provide an adequate system of laws relating to irrigation; declaring certain waters the property of the State; authorizing their appropriation, storage and diversion for certain uses; creating a Board of Water Engineers and prescribing its powers, duties and compensation; defining water rights, and prescribing the method of acquiring, perfecting, recording and preserving same; requiring application to be made to the Board of Water Engineers for permits to construct irrigation works and appropriate water, and prescribing the method thereof; limiting the right to State waters to certain uses, and declaring forfeiture for abandonment of use; prescribing standards for the measurement of water; authorizing appeals from decisions of the Board of Water Engineers; prescribing the method of serving notices; regulating the procedure on hearings before the board, and the mode and manner of appeal therefrom; fixing certain fees dividing the State into water divisions; prescribing the method of recording and transferring titles to irrigation works and establishing a period of limitation to quiet titles thereto; regulating partnership ditches; conferring the right of eminent domain in aid of the construction of irrigation works; prohibiting the seeding of Johnson Grass or Russian Thistle on irrigation canals; prescribing penalties for the violation of provisions of this Act; defining and requiring the casing and capping of artesian wells; authorizing the organization of corporations to construct and operate irrigation works; authorizing contracts for supply and delivery of water, and authorizing and creating liens to secure payment therefor; authorizing the conservation of storm waters and the sale and delivery thereof, and authorizing the use of the beds of natural streams for such purposes, and authorizing the Board of Water Engineers to prescribe rules and regulations in aid thereof, authorizing writs of injunction and other process to prevent the illegal taking of such water; authorizing owners of irrigation works to adopt rules and regulations governing the use and distribution of water; authorizing the acquisition of lands by irrigation companies and requiring the alienation thereof; authorizing work under the Federal Reclamation Act; authorizing the Board of Water Engineers to supervise and in certain cases establish and regulate rates for the use of water; forbidding the obstruction or pollution of irrigation canals and reservoirs; authorizing the Board of Water Engineers to make measurements of flowing streams and to gather other data; recognizing existing rights; making an appropriation; and repealing Chapters 1 and 2, Title 73, Revised Civil Statutes, and other laws, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Certain Waters declared State property.—The unappropriated waters of the ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, collections of still water, and of the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed, within the State of Texas, the title to which has not already passed from the State, are hereby declared to be the property of the State, and the right to the use thereof may be acquired by appropriation in the manner and for the uses and purposes hereinafter provided.

SEC. 2. Purposes for which Storm, Flood or Rain Waters may be Diverted.—The storm, flood or rain waters described in the preceding section may be held or stored by dams, in lakes or reservoirs, or diverted by means of canals, ditches, intakes, pumping plants, or other works, constructed by any person, corporation, association of persons, or irrigation district created under the Statutes, for the purpose of irrigation, mining, milling, manufacturing, the development of power, the con-

struction and operation of waterworks for cities and towns, or for stock raising.

SEC. 3. The Ordinary Flow and Underflow of Flowing Streams may be Diverted, etc.—The ordinary flow and underflow of the flowing water and tides of every natural river, or stream, within the State of Texas, may be taken or diverted from its natural channel by any of the persons named in the preceding section for any of the purposes stated therein; provided, that such ordinary flow and underflow shall not be diverted to the prejudice of the rights of any riparian owner without his consent, except after condemnation thereof in the manner hereinafter provided. The waters of any arm or inlet of the Gulf of Mexico, or of any salt water bay, may be changed from salt to sweet or fresh water, and held or stored by dams, dikes or other structures, and taken or diverted by any of the persons named in this Section for any of the purposes stated herein.

SEC. 4. Purposes of Appropriation.—The appropriation of water must be for irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising. Provided that so far as practicable and within the limits of the public welfare the water engineering board hereinafter created shall subordinate the appropriation of water for power to the appropriation of water for irrigation.

SEC. 5. Priority of Appropriation.—As between appropriators, the first in time is the first in right.

SEC. 6. State Divided Into Water Divisions.—The State shall be and is hereby divided into three water divisions, as follows:

All that portion of the State of Texas lying north of the twenty-ninth parallel, north latitude, and west of the one hundredth meridian west longitude, shall constitute Water Division No. 1.

All that portion of the State of Texas lying east of the ninety-seventh meridian west longitude, and south of the thirtieth parallel north latitude, together with all that portion lying north of the thirtieth parallel north latitude and east of the one hundredth meridian west longitude, shall constitute Water Division No. 2.

All that portion of the State of Texas not embraced in Water Division No. 1 or Water Division No. 2, as hereinbefore defined, shall constitute Water Division No. 3.

SEC. 7. Board of Water Engineers Created.—There shall be and is hereby constituted a Board of Water Engineers, to be composed of three members, one of whom shall be appointed from each of the respective water divisions described in the preceding Section. The members of such board shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall each hold office for a term of six years, and until his successor is appointed and qualified; provided, that at the first appointment made under this Act, one member shall be appointed to serve for two years, one member shall be appointed to serve for four years, and one member shall be appointed to serve for six years, to the end that one member may be appointed every two years after the passage of this Act. No person shall be appointed a member of the board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. Each member of such

board shall enter into bond to be approved by the Governor, made payable to the Governor and his successors in office, in the penal sum of ten thousand dollars, with not less than two personal sureties, or with one surety or guaranty company authorized to do business in this State, conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor or other officer appointed by the Governor to receive same, of all moneys, books and other property belonging to the State then in his hands or under his control or with which he may be legally chargeable as a member of such board. The Governor shall have power to remove at any time, for cause, any member of the State Board of Engineers, after said member shall have been given a full, free and public hearing by the Governor, in his own behalf, before final action is taken, and shall appoint a successor.

SEC. 8. Salary.—Each member of such board shall receive a salary of thirty-six hundred dollars per annum, payable in monthly installments.

SEC. 9. Sessions, Clerks, etc.—The members appointed shall meet at Austin and organize and elect one of their number chairman of said board. A majority of said board shall constitute a quorum to transact business. Said board shall appoint a secretary at a salary of not more than two thousand dollars per annum, and may appoint such experts and employes as may be necessary to perform any duty that may be required of them by this Act, and fix their compensation. The secretary shall keep full and accurate minutes of all transactions and proceedings of said board and perform such duties as may be required by the board. The board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe. The board shall be furnished with an office at Austin with necessary furniture, stationery, supplies, etc., at the expense of the State, to be paid for on the order of the Governor.

SEC. 10. Expenses.—The members, secretary, experts, and employes of the board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the board, to be paid out on the order of the Governor, upon an itemized statement sworn to by the party who incurred the expense and approved by the board.

SEC. 11. May Hold Sessions at Any Place, etc.—The board may hold sessions at any place in this State when deemed necessary to facilitate the discharge of its duties.

SEC. 12. Record of Appropriations to be Filed, etc.—Every person, association of persons, corporation or irrigation district who shall have heretofore constructed or partially constructed any dam, reservoir, lake, canal, ditch or other work for any of the purposes named in this Act, who have not heretofore done so, shall, within one year after this Act goes into effect, and not thereafter, file for record in the office of the County Clerk of the county where the dam, lake, reservoir, pumping plant, intake, or headgate, ditch or canal may be situated, or to which said county may be attached for judicial purposes, and which shall be recorded by said clerk as hereinafter provided, a sworn statement in writing showing approximately the number of acres of land that will be irrigated, the name of such ditch or canal, the point at which the headgate thereof is situated, the size of the ditch or canal and width and depth, and the carrying capacity thereof in cubic feet per second of time, the name of said stream from which said water is taken, the time when

the work was commenced, the name of the owner or owners thereof, together with a map showing the route of such ditch or canal; and when the water is to be taken from a reservoir, dam or lake, the statement above provided for shall show in addition to the ditch and other things provided for, the locality of the proposed dam, reservoir or lake, giving the names or numbers of the surveys upon which it is to be located, its holding capacity in cubic feet of water, the acreage and surface feet of land that will be covered, and the limits of such lake, reservoir or dam, and the area of the watershed from which the storm or rain water will be collected.

SEC. 13. County Clerk Shall Record, etc.—The clerk of the county court shall promptly record the statements and maps, the filing and record whereof is provided for in Section twelve hereof; and shall index the same as is provided for the indexing of deeds of conveyance to real estate; and shall receive for such filing and recording the same fees provided by law for the recording of deeds; and shall make and furnish certified copies of such instruments upon demand, in the same manner, and receive the same fees therefor, as is now provided for the making and supplying of certified copies of the records in his office.

SEC. 14. Statement to be Filed with Board, etc.—Every person, association of persons, corporation, or irrigation district, who shall have heretofore filed for record, or shall hereafter, in compliance with the provisions of section twelve, file for record the sworn statement in writing as set out therein, shall, within one year after this Act shall take effect, file in the office of the board a certified copy of such sworn statement and a true copy of the map as described in Section twelve, and in addition thereto, a sworn statement showing what has been done under or in pursuance of such filing or statement; what work or construction has been completed or partially completed; what portion of said work is in use and what portion is in possession and not in actual use; what amount or volume of water is being actually taken, diverted or used and for what purpose; and the amount or volume of water, as near as may be, that has been diverted, taken or used, and for what purpose, in each and every year since such original filing was made; and if such water was diverted, taken or used for irrigation, the statement shall show, as near as may be, a description and the area of lands being irrigated at said time, and the number and names of the users and consumers of water at said time. Every such statement shall be accompanied by a designation of the name and postoffice address to which any notice authorized or required under this Act shall be directed, and such address shall continue in force until written notice of a change in such address is filed with the board.

Every person, association of persons, corporation or irrigation district, who has, prior to the first day of January, 1913, actually taken or diverted any water and applied same to any of the uses and purposes named in this Act, and is at the date of the filing of the statement herein provided to be filed, continuing to use and apply such water, who shall, within one year after this Act shall go into effect, file with the board the sworn statement last described in this Section, shall, as against the State, have the right to take and divert such water to the amount or volume thus being actually used and applied; provided, that nothing herein shall be construed to affect or relate to any

priority or right as between any claimants, appropriators, or users from any source of water supply.

SEC. 15. Application to Appropriate Water.—Every person, association of persons, corporation, or irrigation district, who shall, after this Act shall take effect, desire to acquire the right to appropriate for the purposes stated in this Act, unappropriated water of the State, shall, before commencing the construction, enlargement, or extension of any dam, lake, reservoir, or other storage work, or of any ditch, canal, headgate, intake, pumping plant, or other distributing work, or performing any work in connection with the storage, taking, or diversion of water, make an application in writing to the board for a permit to make such appropriation, storage, or diversion.

Such application shall be in writing, and sworn to; shall be in duplicate, and shall set forth the name and postoffice address of the applicant; the source of water supply; the nature and purposes of the proposed use; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work; the time within which it is proposed to begin construction; and the time required for the application of the water to the proposed use; and if such proposed use is for irrigation, a description of the lands proposed to be irrigated and, as near as may be, the total acreage thereof.

Such application shall be accompanied by a map or plat drawn on tracing linen on a scale not less than two inches to the mile, showing substantially the location and extent of the proposed works; the location of the headgate, intake, pumping plant or point of diversion by course and distance from permanent natural objects or land marks; the location of the main ditch or canal and of the laterals or branches thereof; the course of the river, stream or other source of water supply; the position and area of all lakes, reservoirs, or basins intended to be used or created, and the water line thereof; the intersection with all other ditches, canals, laterals, lakes or reservoirs, the proposed work will touch or intersect, or with which connections will be made; and shall represent in ink of different color from that used to represent the proposed works, the location of all ditches, canals, laterals, reservoirs, lakes, dams, or other work of like character then existing on the ground, with a designation of the name of the owner thereof. Such map or plat shall contain the name of the proposed work or enterprise; the name or names of the applicant or applicants, and a certificate of the surveyor, giving the date of his survey, his name and postoffice address, and also the date of the application which it accompanies.

Provided, however, that nothing in this Act shall be held or construed to require the filing of an application or procuring of any permit for the alteration, enlargement, extension, or addition to any canal, ditch, or other work that does not contemplate or will not result in an increased appropriation or the use of a larger volume of water.

SEC. 16. Additional Data May Be Required.—If the proposed taking or diversion of water for irrigation is of greater volume than thirty cubic feet of water per second of time, the board may require the following in addition: A continuous longitudinal profile of the main ditch or canal, showing the grade or level of the bottom thereof, and of the top of the levies, and of the maximum discharge line, the horizontal scale of which profile shall be, not less than one inch to one

thousand feet and the vertical scale not less than one inch to twenty feet; a plat showing cross sections of such main ditch or canal at a sufficient number of points to show the different forms, whether in excavation, in fill, in siphons or flumes, and which plat shall be drawn on a horizontal and vertical scale of one inch to twenty feet; plats of any dams, cribs, embankments or other proposed construction to obstruct any river, stream, lake, pond or other source of water supply, which shall be on a longitudinal scale of not less than one inch to two hundred feet, and cross sections thereof on a scale of not less than one inch to twenty feet; the nature of the material to be used and the method of proposed construction; and a plat on a scale of not less than one inch to four feet, showing in detail the timber, brush, stone or other construction except earth.

The maps or plats of all proposed lakes or reservoirs shall show the maximum area to be submerged, with a description thereof, and with sufficient topographical details to enable the contents thereof to be approximately determined, and the contours of such lake or reservoir shall be on a scale of not less than five-foot vertical intervals.

The board may also require the filing of a copy of the engineer's field notes of any survey of such lake or reservoir, and may require plans and specifications, showing in detail all headworks, wasteways, wastegates and of construction for the control or drawing off of all flood or impounded waters.

The board may, in case the applicant is an incorporated company, require the filing of certified copies of the applicant's articles of incorporation, together with a statement of the names and addresses of its directors and officers; and of the amount of its authorized and of its paid-up capital stock.

If the applicant be other than an incorporated company, the board may require the filing of a sworn statement, showing the names and addresses of the person or persons interested in same and the extent of such interest and of the financial condition of each such person.

Every such application shall be accompanied by the fees hereinafter provided, and shall not be filed or considered until such fees are paid.

SEC. 17. Preliminary Examination.—Upon the filing of such application, accompanied by the data and fees hereinbefore provided, it shall be the duty of the board to make a preliminary examination thereof; and if it appear that there is no unappropriated water in the source of supply, or that for other reasons the proposed appropriation should not be allowed, the board may thereupon reject such application; in which case, if the applicant shall elect not to proceed further, the board may return to such applicant any part of the fees accompanying such application.

The board shall determine whether the application, maps, plats, contours, plans, profiles and statements accompanying same, are in compliance with the provisions of this Act and with the regulations of the board and may require the amendment thereof.

SEC. 18. Applications to be Recorded.—All applications filed with the board shall be recorded in a well bound book kept for that purpose in the office of said board, and shall be indexed alphabetically in the name of the applicant, of the stream or source from which such

appropriation is sought to be made, and the county in which appropriation is sought to be made.

SEC. 19. Action Upon Application.—(It shall be the duty of the board to reject all applications and refuse to issue the permit asked for, if there is no unappropriated water in the proposed source of supply; or if the proposed use conflicts with existing water rights, or riparian rights, or is detrimental to the public welfare.) It shall be the duty of the board to approve all applications and issue the permit asked for, if such application is made in proper form in compliance with the provisions of this Act and the regulations of said board; and is accompanied by the fees required in this Act; and if the proposed appropriation contemplates the application of water to any of the uses and purposes provided for in this Act; and does not impair existing water rights, or riparian rights, and is not detrimental to the public welfare.

SEC. 20. Notice of Hearing of Application, Etc.—Before the board shall approve any such application and issue any such permit, notice of such application shall be given substantially in the following manner:

Such notice shall be in writing; shall state the name of the applicant and his residence; the date of the filing of the application in the office of the board; the purpose and extent of the proposed appropriation of water; the source of supply; the place at which the water is to be stored; or to be taken or diverted from the source of supply; together with such additional information as the board may deem necessary. If the proposed use is for irrigation, such notice shall contain a general description of the location and area of the land to be irrigated. Such notice shall also state the time and place when and where such application will be heard by the board.

SEC. 21. Publication of Notices, Etc.—Such notice shall be published once in each week for four consecutive weeks prior to the date stated in such notice for the hearing of such application in some newspaper having a general circulation in that section of the State in which the source of water supply is located. In addition to such publication, a copy of such notice shall be transmitted by the secretary of the board, by registered mail, addressed to each claimant or appropriator of water from such source of water supply, the record of whose claim or appropriation has been filed in the office of the board. Such notices shall be mailed not less than twenty days before the date set for the hearing.

SEC. 22. Hearing Upon Application.—At the time and place stated in the notice, the board shall sit to hear such application. Any person, association of persons, corporation, or irrigation district, may appear, in person or by attorney, and enter appearance in writing in said matter, and present objection to the issuance of permit. The board may receive evidence, orally or by affidavit, in support of and in opposition to the issuance of such permit; and may also hear arguments. It shall have power to adjourn such hearing from time to time and from place to place, and after full hearing to render decision in writing approving or rejecting such application. Such application may be approved or rejected in whole or in part. (Provided, however, that nothing herein contained shall prevent the board from rejecting any application in whole without the issuance of the notice herein required.)

SEC. 23. Cost of Publication.—The cost of publication of the notice herein required and the postage for mailing thereof shall in each case be paid by the applicant.

SEC. 24. Suit Upon Rejected Application.—If the board shall reject any application in whole, the applicant or applicants may, within sixty days after the entry of such order, institute a suit in the district court of the county in which such appropriation is sought to be made, in which such applicant or applicants shall be plaintiff, and all claimants or appropriators of water from the same source of water supply who have filed in the office of the board a record of their claims or appropriations as hereinbefore provided, shall be made defendants. In any such case, the process, pleading, and practice shall be in accordance with the practice of the district court as provided in other civil cases.

SEC. 25. Appeals.—If any application be granted in whole or in part, any party, or number of parties acting jointly who may feel aggrieved by any such decision of the board may appeal from its action to the district court of the county in which the appropriation of water is sought to be made. All persons appealing shall be joined as plaintiffs in the district court, and all other parties who have entered their appearance in writing before said board in said matter shall be joined as defendants.

SEC. 26. Petition and Bond.—The party or parties appealing shall, within sixty days next after the date of the decision of the board appealed from, file in the district court to which the appeal is taken a petition in writing, setting forth the order of the board appealed from and their objections thereto, together with a prayer for the relief sought; and shall also, within such time, enter into a bond, to be approved by the district clerk, in such amount as the district clerk shall fix, payable to all defendants in said suit, conditioned that he, they, or it shall prosecute such appeal to effect and pay all costs and damages which may be adjudged against them, or either or any of them. Upon the filing of such petition and bond, and the approval of the bond by the district clerk, the appeal shall be deemed perfected.

SEC. 27. Proceedings Stayed.—The clerk of the district court shall immediately upon the perfecting of the appeal in his court, transmit to the office of the board a certificate, under the seal of the court, to the effect that said appeal has been perfected. Such certificate shall be entered of record in the office of the board; and thereupon further proceedings by said board in said matter shall be suspended until the determination of such appeal. Process shall issue out of said district court to all parties defendant in said proceeding in the same manner as provided by law in other civil cases originally instituted in such court.

SEC. 28. Transcript.—The party or parties appealing shall, within ninety days after the appeal is perfected, file in the office of the clerk of such district court a certified copy or transcript of all records in the office of the board relating to such application and the action of the board thereon. By agreement of all parties filed with the secretary, any part of such records may be omitted from such transcript.

SEC. 29. Trial de Novo.—When appeal to the district court is perfected, a trial de novo shall be had. The process, pleadings and practice shall follow, as near as may be, the procedure provided in other civil cases originally instituted in said court.

SEC. 30. New Parties May Be Made.—Any claimant or appropriator of water from the same source of supply, and any party having or claiming an interest in the rights involved in any such suit, shall have the right to intervene therein in the district court, new or additional parties may be made to such suit; and any party shall have the right to interplead any other person, association of persons, corporation or irrigation district.

SEC. 31. Board May Intervene.—The board, in behalf of the State, may intervene in any suit or proceeding authorized by this Act.

SEC. 32. Attorney General to Represent Board.—In all litigation to which the board may be a party the Attorney General shall represent the board.

SEC. 33. Precedence on Appeal.—When an appeal is taken as provided in this Act from any decision of the board, such cause shall have precedence in the district court over other civil causes not entitled to a like precedence; and if an appeal be taken from the district court to the court of civil appeals, or from the court of civil appeals to the supreme court, such cause shall have like precedence; provided, that all appeals or writs of error from any judgment rendered in any of such courts shall be perfected or sued out within ninety days from the date of such judgment, and not thereafter.

SEC. 34. Decree of Court Filed with Board.—It shall be the duty of the clerk of the district court, immediately upon the entering of any final judgment, order or decree in any suit or proceeding in which an appeal is taken to the district court as provided in this Act to transmit a certified copy of such judgment, order or decree to the board. If such judgment, order or decree of the district court be appealed from, then upon final determination thereof in the appellate court, it shall be the duty of the clerk of such court to transmit a certified copy of said judgment, order or decree to the board. Same shall be forthwith entered upon the records of the board. Upon the termination of such litigation the board shall comply with the final order or decree therein.

SEC. 35. *ibid.*—When any court of record in this State shall render any judgment, order or decree affecting in any manner the title to any water right, claim, appropriation or irrigation works, or any matter over which the Board of Water Engineers is given supervision under the provisions of this Act, it shall be the duty of the clerk of such court to forthwith transmit to the office of the board a certified copy of such judgment, order or decree.

SEC. 36. Permit Stayed Pending Appeal.—No permit shall be issued by the board until the expiration of sixty days after the date of the decision of the board granting the application, in whole or in part; or if an appeal be taken as provided in this Act, no such permit shall be issued until the final termination of such appeal.

SEC. 37. Form of Permit, etc.—Every permit issued by the board under the provisions of this Act shall be in writing, attested by the seal of said board, and shall contain substantially the following: The name of the applicant to whom issued; the date of the issuance thereof; the date of the filing of the original application therefor in the office of the board; the use or purpose for which the appropriation of water is proposed to be made; the amount or volume of water authorized to be appropriated; a general description of the source of supply from which

the appropriation is proposed to be made; and if such appropriation is for irrigation, a description and statement of the approximate area of the lands to be irrigated; together with such other data and information as the board may prescribe. If such permit is issued in pursuance of the judgment or decree of any court as provided in this Act, same shall in all respects conform to the requirements of such judgment or decree. Upon the issuance of such permit, same shall be transmitted by the secretary of the board by registered mail to the county clerk of the county in which the appropriation is to be made; and upon receipt of a recording fee of one dollar to be paid by the applicant, such clerk shall file and record the same in a well-bound book provided and kept for that purpose only, and to index the same alphabetically under the name of the applicant and of the stream or source of water supply, and thereupon to deliver such permit upon demand to the applicant. Such permit, when thus filed in the office of the county clerk, shall be constructive notice of the filing of the application with the board; of the issuance of the permit; and of all the rights arising thereunder.

SEC. 38. Work to begin in Ninety Days, etc.—Within ninety days after the date of issuance of the permit provided for in this Act, the applicant seeking to appropriate water thereunder shall begin actual construction of the proposed ditch, canal, dam, lake, reservoir or other work, and shall prosecute the work thereon diligently and continuously to completion; provided, that the board may by an order entered of record, extend the time for beginning the actual construction of such work for a period not to exceed twelve months from the date of issuance of such permit; and further provided, that if any applicant shall fail to comply with the requirements of this section, he, they, or it shall thereby forfeit all rights under such permit. If any applicant to whom a permit is issued shall, after beginning the actual construction of work as provided in this section, fail to thereafter prosecute the same diligently and continuously to completion, the board may, after notice to the applicant, and giving him an opportunity to be heard, by an order entered of record, revoke and cancel such permit, in whole or in part. A certified copy of such order shall be forthwith transmitted by the secretary of the board, by registered mail, to the clerk of the county in which such permit is recorded, and which order shall be recorded by said county clerk; provided, that any applicant whose permit is thus cancelled or revoked or sought to be cancelled by the board shall have the right to contest same in the district court in the same manner as provided in this Act for the rejection of an application.

SEC. 39. Use of Water Without Permit Forbidden.—Any person, association of persons, corporation or irrigation district, or any agent, officer, employe or representative of any person, association of persons, corporation or irrigation district, who shall wilfully take, divert or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of this Act, shall be deemed guilty of a misdemeanor; and on conviction thereof shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; and each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense; and the possession of such water, except when the right to its use is

acquired in accordance with the provisions of law, shall be prima facie proof of the guilt of the person, association of persons, corporation, irrigation district, or the agent, officer, employe or representative of any person, association of persons, corporation or irrigation district.

SEC. 40. State May recover Penalty.—In addition to the punishment prescribed in the last preceding section, any person, association of persons, corporation, or irrigation district, or any agent, officer, employe or representative of any such person, association of persons, corporation, or irrigation district, who shall wilfully take, divert, or appropriate water of the State, or the use of such water, without first complying with the provisions of this Act, shall be liable to a penalty of one hundred dollars per day for each and every day that such taking, diversion, appropriation, or use may be made, and the State may recover such penalties by suit brought for that purpose in any court of competent jurisdiction.

SEC. 41. Date of Priority.—When any permit is issued under the provisions of this Act, the priority of the appropriation of water or the claimant's right to the use of such water shall date from the date of the filing of the original application in the office of the board.

SEC. 42. Board to Measure Streams, Make Reports, etc.—It shall be the duty of the board to make or cause to be made measurements and calculations of the flow of streams from which water may be appropriated as provided in this Act, commencing such work in those streams most used for irrigation or other beneficial uses; to collect data and make surveys; to determine the most suitable location for constructing works to utilize the waters of the State; to ascertain the location and area of the lands best suited for irrigation; to examine and survey reservoir sites; and wherever practicable, to make estimates of the cost of proposed irrigation works, and of the improvements of reservoir sites. It shall be the duty of the board to make itself conversant with the water courses of the State and of the needs of the State concerning irrigation matters and the storage and conservation of the waters of the State for other purposes. The board shall make biennial reports in writing to the Governor, in which shall be included the data and information collected by said board, and in which shall be included such suggestions as to the amendment of existing laws and the enactment of new laws as the information and experience of the board may suggest. The board shall keep in its office full and proper records of its work, observations and calculations, all of which shall be the property of the State.

SEC. 43. Board to Make Rules, etc.—The board may adopt and enforce such rules, regulations and modes of procedure as it may deem proper for the discharge of the duties incumbent upon it under the provisions of this Act.

SEC. 44. Fees.—The board shall charge and collect for the benefit of the State the following fees:

For filing each and every application for the storage of water, a fee of twenty-five dollars; provided, that if the application shall contemplate and propose the storage of water in excess of five thousand acre feet, an additional fee of one dollar shall be charged for each additional one thousand acre feet or fractional part thereof.

For filing each and every application which contemplates and proposes the taking or diversion of water for irrigation purposes, one cent per acre for each and every acre proposed to be irrigated.

For filing each application contemplating and proposing the taking, diversion or use of flowing water for any other purpose than storage or the irrigation of land as hereinbefore provided, seventy-five cents for each cubic foot of water per second of time sought to be appropriated; provided, that if the appropriation shall contemplate the storage and diversion and use of water, for any two of such purposes, the fee charged and collected shall be based upon only one of such purposes, and that shall be the one for which the highest fee is provided herein.

For the filing of each and every exhibit, map, affidavit or other paper authorized to be filed in the office of the Board of Water Engineers, a filing fee of ten cents.

For the recording of each and every paper authorized or required to be recorded in the records of the office of the board, a fee of fifteen cents per folio of one hundred words.

For making and certifying each and every copy of any instrument or paper authorized to be certified under the seal [seal] of such board, a fee of fifteen cents per folio, including the certificate.

For making and certifying copies of any map or blue print thereof authorized to be filed in the office of the board, the same fees as are now or may be prescribed by law for the making and certifying of such copies by the Commissioner of the General Land Office.

For filing each application for extension of time within which to complete work a fee of twenty-five dollars.

SEC. 45. Extension of time.—When the holder of any permit issued under the provisions of this Act has actually commenced construction of work thereunder, and has prosecuted and is prosecuting same with diligence as provided in this Act, the board may, upon an application in writing, presented to the board, for good cause shown, by an order entered of record, extend the time within which construction is required to be completed; provided, the board shall not consider or grant any application for such extension until the applicant has first paid the fees provided therefor.

SEC. 46. Standard of Measure.—A cubic foot of water per second of time shall be the standard unit for the measurement of flowing water, both for the purpose of determining the flow of water in streams and for the purpose of distributing water for beneficial uses. The standard unit of volume of static water shall be the acre foot.

Units Defined.—A cubic foot per second of time is the quantity of water that will pass through a square foot opening in one second when flowing at an average velocity of one foot per second. An acre foot is the quantity of water required to cover one acre one foot deep.

SEC. 47. Water Right.—A Water Right is the right to use the water of the State when such use has been acquired by the application of water under the Statutes of this State and for the purposes stated in this Act. Such use shall be the basis, the measure and the limit to the right to use water of the State at all times, not exceeding in any case the limit of volume to which the user is entitled and the volume which is necessarily required and can be beneficially used for irrigation or other authorized uses.

SEC. 48. Right Limited to Beneficial Use.—Rights to the use of water

acquired under the provisions of this Act shall be limited and restricted to so much thereof as may be necessarily required for the purposes stated in this Act irrespective of the carrying capacity of the ditch, and all the water not so applied shall not be considered as appropriated.

SEC. 49. Right Forfeited by Abandonment.—Any appropriation or use of water heretofore made under any statute of this State or hereafter made under the provisions of this Act which shall be wilfully abandoned during any three successive years, shall be forfeited and the water formerly so used or appropriated shall be again subject to appropriation for the purposes stated in this Act.

SEC. 49a. Any person, association of persons, corporation or irrigation district, having prior to March 28th, 1913, constructed any dam or dams across any river, or other stream, for the purpose of storing water for any of the purposes set forth in Section 2 of this Act shall have the right to appropriate the ordinary flow or underflow, or the storm, flood or rain waters of such stream, in amounts and quantities equal to the holding capacity of such dam or dams, by making application as provided for in Section 14 of this Act, and such application shall have priority over all other applications; and, provided, that any such person, association of persons, corporation or irrigation district thus impounding water in any river channel, lake or reservoir and appropriating the same shall have the right to collect from any riparian owner who shall divert such impounded water from said reservoir by pumping or otherwise a reasonable sum for the water so diverted, such sum to be determined by the Board of Water Engineers, based upon the benefits accruing to such riparian owner by reason of the construction of such dam, lake or reservoir and the impounding of such waters therein, provided, the owner of such dams, lake or reservoir, and the owner of riparian rights using such water cannot agree upon the price to be paid therefor.

SEC. 50. Conservation of Storm Water Authorized.—Any person, association of persons, corporation, or irrigation district having in possession and control storm, flood, or rain waters conserved or stored under the provisions of this Act may enter into contract to supply same to any person, association of persons, corporation, or irrigation district having the right to acquire such use; provided, that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as hereinafter provided for other water rates and charges; provided, that if any person shall use such stored or conserved water without first entering into contract with the party having stored or conserved the same, such user shall pay for the use thereof such charge or rental as the board shall find to be just and reasonable, and subject to revision by the court as herein provided for other water rates and charges.

SEC. 51. Use of Streams for Conveying Stored Water.—For the purpose of conveying and delivering storm, flood or rain water from the place of storage to the place of use as provided in the preceding Section, it shall be lawful for any person, association of persons, corporation or irrigation district to use the banks and bed of any flowing natural stream within this State; under and in accordance with such rules and regulations as may be prescribed by the Board of Water Engineers; and such board shall prescribe rules and regulations for

such purpose. No person, association of persons, corporation, or irrigation district who has not acquired the right to the use of such conserved or stored waters as provided in the last preceding Section shall take, use, or divert same.

SEC. 52. Penalty for Unlawful Interference.—Any person, association of persons, corporation, or irrigation district, of [or] the agent, officer, employee, or representative of any such person, association of persons, corporation, or irrigation district who shall wilfully interfere with the passage of or take, divert, or appropriate such conserved or stored water during the passage and delivery thereof as provided in the last two preceding sections, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

SEC. 53. Injunction Authorized.—It shall be the duty of the district court, or the judge thereof, of any judicial district in or through which the conserved or stored waters described in the last three preceding Sections may pass, at the suit of any party having an interest therein, upon it being made to appear that any person, association of persons, corporation, or irrigation district or any agent, officer, employee, or representative thereof is interfering with or threatening or about to interfere with, the passage, or is taking, diverting, appropriating, or threatening, or about to take, divert, or appropriate, any conserved or stored waters, in violation of the provisions of the last three preceding Sections; to issue such writ or writs of injunction, mandamus, or other process as may be proper or necessary to prevent such wrongful acts.

SEC. 54. Formation of Corporations Authorized.—Corporations may be formed and chartered under the provisions of this Act and of the general corporation laws of the State of Texas, for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and of conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stock-raising.

SEC. 55. Sale of Water Rights Authorized.—All such corporations shall have full power and authority to make contracts for the sale of permanent water rights, and to have the same secured by liens on the land or otherwise, and to lease, rent, or otherwise dispose of the water, controlled by such corporation for such time as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land or otherwise.

SEC. 56. Persons Entitled to Use Water.—All persons who own or hold a possessory right or title to land adjoining or contiguous to any dam, reservoir, canal, ditch, flume or lateral constructed and maintained under the provisions of this Act, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam, reservoir or lake with water for irrigation of such

land, and for mining, milling, manufacturing, development of power, and stockraising, in accordance with the terms of his or their contract.

SEC. 57. No Discrimination Against Users.—If the person, association of persons or corporation owning or controlling such water, and the person who owns or holds a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral, lake or reservoir, constructed or maintained under the provisions of this Act, fail to agree upon a price for a permanent water right, or for the use or rental of the necessary water to irrigate the land of such person, or for mining, milling, manufacturing, the development of power, or stockraising; such person, association of persons or corporation shall, nevertheless, if he, they or it, have or control any water not contracted to others, furnish the necessary water to such person to irrigate his lands or for mining, milling, manufacturing, the development of power or stockraising, at such prices as shall be reasonable and just, and without discrimination.

SEC. 58. Water to be Pro Rated.—In case of shortage of water from drouth, accident or other cause, all water to be distributed shall be divided among all consumers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given to none; provided, that nothing in this Section contained shall be held to preclude any such person, association of persons or corporation owning or controlling such water from supplying the same to any person having a prior vested right thereto under the laws of this State.

SEC. 59. Permanent Water Right and Easement.—The permanent water right shall be an easement to the land and pass with the title thereto; and the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract with such person, association of persons or corporation, or, in case no contract is entered into, then at just and reasonable prices, and without discrimination. Any instrument of writing conveying a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land.

SEC. 60. Regulation of Rates.—If any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir or lake, or from any conserved or stored supply, shall present to the board his petition in writing, showing that the person, association of persons, corporation or irrigation district, owning or controlling such water has a supply of water not contracted to others and available for his use, and fail or refuse to supply such water to him, or that the price or rental demanded therefor is not reasonable and just or is discriminatory; and that the complainant is entitled to receive or use such water and is willing and able to pay a just and reasonable price therefor; and shall accompany such petition with a deposit of twenty-five dollars; it shall be the duty of the board to make a preliminary investigation of such complaint and determine whether there is probable ground therefor. If said board shall determine that no probable ground exists for such complaint, same shall be dismissed, and the deposit may, at the discretion of the board, be returned to the complainant or paid into the State Treasury.

SEC. 61. Ibid.—If the board shall determine that probable ground

exists for such complaint, it shall enter an order setting said matter for hearing at a time and place to be named therein. The board may, in its discretion, require the complainant to make an additional deposit, or to enter into bond in an amount fixed by the board, conditioned for the payment of all costs of such proceeding, and which bond shall be approved by the board. Thereupon it shall be the duty of the secretary of the board to transmit a certified copy of the petition of complainant and of the order setting same for hearing, by registered mail, addressed to the party or parties against whom such complaint is made, and which notice shall be deposited in the mails at least twenty days before the date set for such hearing.

SEC. 62. *Ibid.*—At the time and place stated in such order, the board shall sit to hear such complaint. It may hear evidence orally or by affidavit in support of or against such complaint, and may hear arguments, and shall have power to adjourn such hearing from time to time and from place to place, and upon completion thereof shall render decision in writing.

SEC. 63. *Ibid.*—Appeal from such decision of the board may be taken within the time and in the manner as hereinbefore provided for other appeals from the decision of such board. The decision may be suspended by the filing of a supersedeas bond in the same manner as now provided in other civil cases; provided, that the board shall fix the amount of the bond necessary to stay the execution of any such order.

SEC. 64. Issuance of Subpoenas Authorized, Etc.—In any examination, investigation or proceeding authorized before the Board of Water Engineers, such board shall have power to issue subpoenas for the attendance of witnesses under such rules as the board may prescribe. Each witness who shall appear before the board by order of the board, at a place outside of the county of his residence shall receive for his attendance, one dollar per day and three cents per mile travelled by the nearest practicable route in going to and returning from the place of meeting of said board, which shall be ordered paid by the Comptroller of Public Accounts upon the presentation of proper vouchers sworn to by such witness and approved by the chairman of the board; provided, that no witness shall be entitled to any witness fees or mileage who is directly interested in such proceeding.

SEC. 65. Who May Administer Oaths, Etc.—In any examination or hearing held before the Board of Water Engineers, the board shall have authority to adjourn such hearing from time to time and from place to place. Each member of such board and the secretary thereof shall be authorized to administer oaths.

SEC. 66. Certified Copies.—Upon application of any person, the board shall furnish certified copies of any order or decision of record of such board, or of any paper, map or other document filed in the office of such board, and such certified copies under the hand of the secretary and the seal of the board shall be admissible in evidence in any court in the same manner and with like effect that the original would be entitled to.

SEC. 67. Rules May be Prescribed, Etc.—Every person, association of persons, corporation or irrigation district, conserving or supplying water for any of the purposes authorized by this Act shall have the right to make and publish all reasonable rules and regulations relating

to the method and manner of supply, use and distribution of water, and prescribing the time and manner of making application for the use of water and of payment therefor.

SEC. 68. Conveyances. How Made.—Every conveyance of a ditch, canal or reservoir, or other irrigation work, or any interest therein, shall hereafter be executed and acknowledged in the same manner as the conveyance of real estate, and recorded in the deed records of the county or counties in which such ditch, canal or reservoir is situated, and any such conveyance which shall not be made in conformity with the provisions of this Act shall be null and void as against subsequent purchasers thereof in good faith and for valuable consideration.

SEC. 69. Interference with Headgates, Etc., Forbidden.—Any person, who shall wilfully open, close, change or interfere with any headgate or water box, without lawful authority, or who shall wilfully use water or conduct water in or through his ditch or upon his land, to which water he is not entitled, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum of not less than ten dollars, and not more than one hundred dollars, or by imprisonment in the county jail for a term not exceeding sixty days; provided, that the possession or use of water to which the person using or possessing same shall not lawfully be entitled shall be prima facie proof of the guilt of the person so using or in possession of same.

SEC. 70. Penalty for Injuring Works.—Any person or persons who shall knowingly and wilfully cut, dig, break down, destroy, or injure, or open any gate, bank, embankment or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, building, structure or other work, which is the property of another, or in which another owns an interest, or which is in the lawful possession or use of another or others, and which is used for the purpose of irrigation or milling or mining, or manufacturing, or for the development of power or for domestic purposes, or for stockraising, with intent maliciously to injure any person, association or corporation or irrigation district, or for the gain of any person, association or corporation, so cutting, digging, breaking, injuring or opening any such work hereinbefore in this Section named, or with the intent of stealing or taking or causing to run out or waste out of any such ditch, canal or reservoir, feeder or flume, any water for his own profit, benefit or advantage or to the injury of any person, association or corporation lawfully entitled to the use of such water or to the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, machinery, structure or other irrigation work, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than one thousand dollars, and may be punished by imprisonment in the county jail for any term not exceeding two years, or by both such fine and imprisonment.

SEC. 71. Penalty for Polluting or Obstructing Canals, Etc.—Any person or persons who shall deposit in any canal, lateral, reservoir or lake, used for any of the purposes enumerated in this Act, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character, or any other article or articles which might pollute or obstruct the flow of water in any such canal or other similar structure, shall be deemed

guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

SEC. 72. Partnership Ditches.—In all cases where irrigation ditches are owned by two or more persons, or by mutual or co-operative companies or corporations, and one or more of such persons, or shareholders shall fail or neglect to do or to pay for his proportionate share of the work necessary for the proper maintenance and operation of such ditch, the owners or shareholders, desiring the performance of such work as is reasonably necessary to maintain and operate the ditch may, after having given ten days' written notice to such joint owner, or owners, or shareholders who have failed to pay for or perform their proportionate share of work necessary for the operation and maintenance of said ditch, proceed themselves to do such work or cause the same to be done, and may recover therefor from such person so failing to perform or pay for his share of such work, in any court having jurisdiction over the amount, the reasonable expense or value of such work or labor so performed.

SEC. 73. Surplus Water to be Returned.—All surplus water taken or diverted from any running stream not used by the appropriator or disposed of to consumers for the purposes stated in this Act, shall, wherever reasonably practicable, be conducted back to the stream from which taken or diverted.

SEC. 74. Preliminary Surveys.—Every person, association of persons, corporation, or irrigation district shall have power to cause an examination and survey for its proposed work to be made as may be necessary to the selection of the most advantageous reservoir sites and rights of way for any of the purposes authorized by this Act and for such purposes shall have the right to enter upon the lands or waters of any person.

SEC. 75. Right of Way Over Public Lands.—Every person, association of persons, corporation, or irrigation district formed for any of the purposes authorized by this Act, are hereby granted the right of way not to exceed one hundred feet in width and the necessary area for any dam and reservoir site over all public, public free school, University and Asylum lands of this State, with the use of the rock, gravel and timber on such reservoir site and right of way for construction purposes, after paying such compensation as the Board of Engineers may determine, and may acquire such reservoir site and rights of way over private lands by contract.

SEC. 76. Eminent Domain.—Any person, association of persons, corporation, or irrigation district or any city or town may also obtain the right of way over private lands and also the land for pumping plants, intakes, headgates and storage reservoirs, by condemnation by causing the damages for any private property appropriated by any such person, association of persons, corporation, or irrigation district, or city or town to be assessed and paid for as provided in cases of railroads, provided that in exercising the right of eminent domain, as authorized in this Section, there shall be no condemnation of the water rights of riparian owners or appropriators now using or appropriating said water, or who may use or appropriate same, in any stream or lake,

or water impounded by them in the channel of such stream or lake by damming same. This provision shall not affect the common law right of condemnation for municipal use by cities and towns.

SEC. 77. Public Roads and Bridges.—All such persons, association of persons, corporations, and irrigation districts shall have the right to run along or across all roads and highways necessary in the construction of their work and shall at all such crossings construct and maintain necessary bridges, culverts, or siphons and shall not impair the uses of such road or highway; provided, that if any public road or highway or public bridge shall be upon the ground necessary for the dam site, reservoir, or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridge that the same may not interfere with the construction of the proposed dam, reservoir, or lake; provided further, that the expense of making such change shall be paid by the person, association of persons, corporation or irrigation district desiring to construct such dam site, lake or reservoir.

SEC. 78. May Cross Streams.—Such person, association of persons, corporation or irrigation district shall have power to construct its ditch or canal across, along or upon any stream of water.

SEC. 79. Surveys Under Reclamation Act.—When in the examination of any irrigation or reclamation project under the provisions of the act of Congress, known as the Reclamation Act, approved June 17, 1902, it shall be found advisable or necessary to irrigate or reclaim lands within the limits of this State, the Secretary of the Department of the Interior is authorized to make all necessary examinations and surveys for and to locate and construct irrigation or reclamation works within this State and to perform any and all acts necessary to carry into effect the provisions, limitations, charges, terms and conditions of said Reclamation Act.

SEC. 80. Reclamation Projects.—The provisions of this Act shall in all things apply to the construction, maintenance and operation of any irrigation works in this State, constructed under what is known as the Federal Reclamation Act, approved June 17, 1902, and the amendments thereto in so far as the provisions of this Act are not inconsistent with said Act of Congress or the amendments thereto or the regulations prescribed by the Secretary of the Department of the Interior in conformity to such Reclamation Act and the amendments thereto.

SEC. 81. Diversion of Water from Watershed Prohibited When.—It shall be unlawful for any person, association of persons, corporation, or irrigation district to take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course, or watershed in this State into any other natural stream, water course, or watershed to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted.

SEC. 82. Ibid.—Before any person, association of persons, corporation, or irrigation district shall take any water from any natural stream, water course, or watershed in this State into any other watershed, such person, association of persons, corporation, or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the board until after full hearing before said board as to the rights to be affected thereby, and such hearing shall be held and notice thereof given at such time and

such place in such mode and manner as the board may prescribe; and from any decision of the board an appeal may be taken to the district court of the county in which such diversion is proposed to be made in the mode and manner prescribed in this Act for other appeals from the decision of the board.

SEC. 83. Penalty Prescribed.—If any person, association of persons, corporation, irrigation district, or the agent, attorney, employe, or representative of any such person, association of persons, corporation or irrigation district, shall take or divert any waters from one natural stream, water course, or watershed into any other watershed contrary to the provisions of the last two preceding Sections of this Act, he, it or they, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail for any term not exceeding six months, and each day that such taking or diversion shall continue shall constitute a separate offense.

SEC. 84. Reservoirs and Canals to Be Fenced.—Unless the person, association of persons, corporation, or irrigation district owning or controlling any ditch, canal, reservoir, dam, or lake shall keep the same securely fenced, no cause of action shall accrue in their favor against owners of livestock for any trespass thereon.

SEC. 85. Alienation of Land Required.—Any corporation organized under the provisions of the General Laws of this State, or the provisions of this Act for any of the purposes stated in this Act, shall have the power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide, and dispose of all such land and other property; and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs, dams, lakes, wells and other property and franchises to the extent of the value thereof to secure the payment of any debts contracted for same; provided, no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increases of stock or indebtedness shall be void: and provided further, all lands acquired by such corporation except such as are used for the construction, maintenance, or operation of such canals, ditches, laterals, feeders, reservoirs, dams, lakes, wells and other necessary works, shall be alienated within fifteen years from the date of acquiring said lands or be subject to judicial forfeiture.

SEC. 86. Directors May Be Elected.—Any corporation organized under the provisions of the General Laws of this State or the provisions of this Act, for any of the purposes stated in this Act, may elect directors or trustees to hold office for a period of three years and may provide for the election of one-third in number thereof each year.

SEC. 87. Liens, Etc.—Every person, association of persons, corporation or irrigation district, who has heretofore constructed or may hereafter construct any ditch, canal, dam, lake or reservoir for the purposes of irrigation, and who shall lease, rent, furnish, or supply water to any person, association of persons, or corporation for the purpose of irrigation, shall, irrespective of contract, have a preference lien superior to every other lien upon the crop or crops raised upon the land thus irrigated.

SEC. 88. Ibid.—For the enforcement of the lien provided for in the

preceding Section, every such person, association of persons, corporation or irrigation district shall be entitled to all the rights and remedies prescribed by Chapter 1, Title 80, of the Revised Civil Statutes of this State for the enforcement of the lien as between landlord and tenant.

SEC. 90. Johnson Grass and Russian Thistle.—It shall be unlawful for any person, association of persons, corporation or irrigation district owning, leasing or operating any ditch or canal or reservoir or cultivating any lands, abutting upon any reservoir, ditch, flume, canal, waste-way or lateral to permit Johnson Grass or Russian Thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way or lateral, where the same crosses or lies upon land in the ownership or control of any such person, association of persons, corporation or irrigation district, and any one violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be fined in any sum not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment.

SEC. 91. Artesian Wells.—An artesian well is defined for the purposes of this Act to be any artificial well in which, if properly cased, the waters will rise by natural pressure above the strata in which they are found.

SEC. 92. Any artesian well which is not tightly cased, capped and furnished with such mechanical appliances as will readily and effectively arrest and prevent the flow from such well, either over the surface of the ground about the well or wasting from the well through the strata through which it passes is hereby declared a public nuisance and subject to be abated as such.

SEC. 93. Waste Defined.—Waste is defined for the purposes of this Act in relation to artesian wells to be the causing, suffering or permitting the waters of an artesian well to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land or any other person than that of the owner of such well, or upon the public lands, or to run or percolate through the strata above that in which such water is found: unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well; provided, that nothing in this Section shall be construed to prevent the use of such water, if suitable, for the proper irrigation of trees standing along or upon any street, road or highway, or for ornamental ponds or fountains, or the propagation of fish or for the purposes authorized by this Act.

SEC. 94. Penalty.—Any person causing, suffering, or permitting the waste of water from an artesian well as defined in the last preceding Section shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be fined in any sum not less than twenty-five dollars nor more than five hundred or by imprisonment in the county jail for any period not exceeding six months, or by both such fine and imprisonment.

SEC. 95. Record of Boring, Etc.—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed, shall transmit by registered mail to the Board of Water Engineers a copy of such record. Any person vio-

lating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined in any sum not less than ten dollars nor more than one hundred dollars.

SEC. 96. Oil Wells.—Nothing in the preceding Sections numbered ninety-one to ninety-five, inclusive, shall be construed to apply to any oil well, and the status of such oil wells shall be unaffected by this Act.

SEC. 97. Nothing in this Act contained shall be construed as a recognition of any riparian right in the owner of any lands the title to which shall have passed out of the State of Texas subsequent to the first day of July, A. D. 1895.

SEC. 98. Nothing in this Act contained shall be held or construed to alter, affect, impair, increase, destroy, validate or invalidate any existing or vested right, existing at the date when this Act shall go into effect.

SEC. 98a. Nothing in this Act shall be held or construed to in any manner impair any right of any riparian land owner as same has been heretofore and is now recognized under the laws of this State as construed by the decisions of our Supreme Court.

SEC. 99. If any provision of this Act shall be held unconstitutional, it shall not be held to invalidate any other provision of this Act.

SEC. 100. The sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, for the purpose of carrying out the provisions of this Act between the time the Act shall take effect and the 31st day of August, 1913.

SEC. 101. Chapters 1 and 2 of Title 73 of the Revised Civil Statutes of the State of Texas, adopted in 1911, and all other laws and parts of laws in conflict herewith are hereby repealed.

SEC. 102. The crowded condition of the calendar and the near approach of the end of the session, together with the fact that the irrigation laws of this State are in an unsatisfactory condition and are retarding development, creates an imperative public necessity requiring that the constitutional rule that bills be read upon three several days be suspended, and that this Act take effect from and after its passage, and it is so enacted.

[NOTE.—H. B. No. 37 passed the House of Representatives March 12, 1913, but no vote given, and House concurred in Senate amendments March 29, 1913, but no vote given; and passed the Senate with amendments March 29, 1913, but no vote given.]

Approved April 9, 1913.

Takes effect 90 days after adjournment.